

REMARKS

Upon entry of the instant amendment, claims 1-13 remain pending in the above-identified application and stand ready for further action on the merits.

Further to Supplemental Amendment of March 16, 2010, claims 1-13 have been amended in this Amendment. The instant amendment made herein to the claims does not incorporate new matter into the application as originally filed. For example, the amendments to claim 1 find support in claims 4 and 5. Claims 4 and 5 are amended to maintain consistencies with amended claim 1.

Accordingly, the present amendments to the claims do not introduce new matter into the application as originally filed. As such entry of the instant amendment and favorable action on the merits is earnestly solicited at present.

Claim Rejections under 35 U.S.C. § 112

Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because of the terms "*its mouse*" and "*the skirt*" in claim 1.

However, the terms "*its mouse*" and "*the skirt*" cannot be found in claim 1. Applicants respectfully traverse and request withdrawal of the rejection.

Claim Rejections under 35 U.S.C. § 103

Claims 1-5 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heyn US '940 (US 2006/0191940) in view of Kleemola US '120 (US 5,236,120).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Heyn US '940 and Kleemola US '120, and further in view of Maruhashi et al. US '366 (US 4,551,366).

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Heyn US '940 and Kleemola US '120, and further in view of Hawley US '132 (US 3,095,132).

Claims 7 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heyn US '940 and Kleemola US '120, and further in view of Tupper US '158 (US 2,998,158).

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Heyn US '940, Kleemola US '120, and Tupper US '158 and further in view of Collie US '998 (US 3,557,998) or Jacobson US '334 (US 3,515,334).

The rejections are respectfully traversed. Reconsideration and withdrawal of the rejections are requested based upon the following considerations.

Nonobviousness over the Combination of the Cited References

The claimed invention is directed to a cup package made of a fibre-based material, comprising: a cup (1) containing a packaged product (2); and a lid (6) closing a mouth of the cup, wherein the cap and the lid are made from polymer-coated board, the cup (1) comprises a mantle (3) bent downward at the mouth (4) of the cup to form a collar (5) diverging from the mantle, and the lid (6) has a downwardly oriented rim (8), at which the lid is fixed to the collar by heat sealing, as recited in claim 1.

In short, in the present invention, both of the cap and the lid are made from polymer-coated board.

However, the cup and the lid as disclosed in the primary reference Heyn US '940 are made of plastic, not polymer-coated board as recited in the present claims.

Furthermore, Heyn US '940 is a non-provisinal application filed based on a provisional application filed on 25 February 2005, whereas the present application claims priority under 35 U.S.C. § 119(a) from Finnish patent application no. 20040431 filed on March 22, 2004, which is earlier than the earliest filing date of Heyn US '940 (February 25, 2005). Thus, Heyn US '940 can be antedated by perfecting the claim to the priority under 35 U.S.C. § 119(a).

The secondary reference Kleemola US '120 discloses a board container with a lid, but fails to disclose or suggest the claimed collar diverging from the mantle of the container, which creates distance from the container part defined by the mantle. According to Kleemola US '120, the bent collar is lying tightly against the top part of the mantle tapering towards the mouth of the container. In Kleemola US '120, there is no teaching or suggestion of the problem and the solution the present invention is dealing with. In the claimed invention, the tapering collar receiving the heat-sealed lid remains in close proximity with the product contained in the cap package even when the full volume of the container part is occupied by the product.

Similarly, the remaining secondary references (*e.g.* Maruhashi et al. US '366, Hawley US '132, Tupper US '158, Collie US '998 and Jacobson US '334) also fail to disclose or suggest the claimed features.

Therefore, there is not provided any rationale and/or reasonable expectation of success based on the combination of the cited references, by which one skilled in the art could arrive at the present invention as claimed, since the cited references fail to disclose or suggest each of the instantly claimed features, as explained above. Thus, it is submitted that the present invention (claim 1 and its dependent claims) is not obvious over the combination of the cited references.

Based on the foregoing considerations, Applicants respectfully request that the Examiner withdraw the rejections.

Allowable Subject Matter

Applicants appreciate the Examiner's courtesy in indicating that claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph.

Applicants respectfully submit that dependent claims 11 and 12 are allowable since claim 1 should be patentable over the combination of the cited reference as explained above.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of the pending claims is allowed.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Toyohiko Konno, Reg. No. L0053 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: SEP 24 2010

Respectfully submitted,

By 

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